IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICOLE HILL-MURRAY

4644 Penn St., Apt. 7

Philadelphia, PA 19124

CIVIL ACTION

Plaintiff,

DOCKET NO.:

v.

CVS PHARMACY, INC.

1826 Chestnut St.

Philadelphia, PA 19103

Defendant.

JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

Nicole Hill-Murray (hereinafter referred to as "Plaintiff," unless indicated otherwise), by and through her undersigned counsel, hereby avers as follows:

INTRODUCTION

1. This action has been initiated by Plaintiff against CVS Pharmacy, Inc. (hereinafter referred to as "Defendant") for violations of the Americans with Disabilities Act, as amended ("ADA" - 42 USC §§ 12101 et. seq.), the Family and Medical Leave Act ("FMLA - 29 U.S.C. §2601 et. seq.), and the Pennsylvania Human Relations Act ("PHRA"). Plaintiff asserts, inter alia, that she was unlawfully terminated from Defendant. As a direct consequence of Defendant's unlawful actions, Plaintiff seeks damages as set forth herein.

¹ Plaintiff will move to amend the instant Complaint to include violations of the PHRA after full administrative exhaustion before the Pennsylvania Human Relations Commission. Such claims will identically mirror Plaintiff's federal claims asserted herein under the ADA.





JURISDICTION AND VENUE

- 2. This Court has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§1331 and 1343(a)(4) because it arises under laws of the United States and seeks redress for violations of civil rights under the FMLA and the ADA.
- 3. This Court may properly maintain personal jurisdiction over Defendant because Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction in order to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in <u>International Shoe Co. v.</u> Washington, 326 U.S. 310 (1945) and its progeny.
- 4. Pursuant to 28 U.S.C. §1391(b)(1) and (b)(2), venue is properly laid in this district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.
- 5. Plaintiff filed a Charge of discrimination and retaliation with the Equal Employment Opportunity Commission ("EEOC") and also dual-filed said charge with the Pennsylvania Human Relations Commission ("PHRC"). Plaintiff has properly exhausted her administrative proceedings (with respect to her ADA claims) before initiating this action by timely filing and dual-filing her Charge with the EEOC and PHRC, and by filing the instant lawsuit within 90 days of receiving a right-to-sue letter from the EEOC.

PARTIES

- 6. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
 - 7. Plaintiff is an adult individual, with an address as set forth in the caption.

- 8. Defendant CVS Pharmacy, Inc. is a national health and retail company with locations throughout the United States, including the location at which Plaintiff was employed in Philadelphia, PA (as identified in the above-captioned address).
- 9. At all times relevant herein, Defendant acted by and through its agents, servants and/or employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

FACTUAL BACKGROUND

- 10. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
 - 11. Plaintiff was hired to work for Defendant on or about November 4, 2010.
 - 12. During her tenure with Defendant, Plaintiff was employed as a Cashier.
- 13. Plaintiff has and continues to suffer from qualifying disabilities under the ADA, including but not limited to Sciatica.
- 14. Plaintiff's Sciatica, at times, limits her ability to perform some daily life activities, including but not limited to standing, walking, working, and performing manual tasks.
- 15. Despite Plaintiff's aforesaid health conditions and limitations, she was still able to perform the duties of her job well with Defendant; however, she required reasonable accommodations at times (discussed further *infra*).
- 16. In or about September of 2016, Plaintiff formally (per Defendant's policy) requested reasonable medical accommodations for her aforementioned health conditions, including but not limited to being provided with a stool so she could sit at times and not being required to stand for prolonged periods of time.

- 17. Both accommodations that were requested by Plaintiff in September of 2016 (as discussed *supra*) were supported by a medical note from her physician.
- 18. Even though Plaintiff was informed by Defendant's Human Resources Department on or about October 13, 2016 that her aforesaid requests for reasonable medical accommodations had been approved, Defendant's management, including but not limited to James Ditto, refused to provide Plaintiff any accommodations.
- 19. Therefore, even though Defendant's HR department deemed Plaintiff's requests for medical accommodations to be reasonable, Defendant's management still failed to provide her with accommodations in accordance with her aforesaid medical documentation.
- 20. In addition to refusing to provide Plaintiff with reasonable accommodations for her health conditions, Defendant's management, including but not limited to Ditto, also began to treat Plaintiff in a rude and demeaning manner and belittle her.
- 21. As a result of Defendant's failure to accommodate her medical conditions, Plaintiff complained to Defendant Corporate Employee Relations office that Defendant was violating her rights under the ADA.
- 22. Instead of properly investigating or resolving her complaints of discrimination/failure to accommodate under the ADA, Defendant's Corporate Employee Relations office encouraged Plaintiff to take a medical leave of absence.
- 23. Therefore, in or about October of 2016, Plaintiff informed Defendant's management that she was going to need to take a medical leave of absence for her aforesaid health conditions (an FMLA-qualifying leave) from in or about November of 2016 through in or about January of 2017.

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- 24. Towards the end of October 2016, Plaintiff's aforesaid health conditions began to flare up and Plaintiff was required to miss a few days from work; however, Plaintiff apprised Defendant's management of her need to miss time from work as a result of her aforesaid health conditions.
- 25. In or about November of 2016, when Plaintiff contacted Defendant to determine the status of her block medical leave request, Plaintiff was informed that her employment with Defendant had been terminated as of October 31, 2016 for allegedly being a "no-call/no-show."
- 26. The purported reason for Plaintiff's termination is completely pretextual as (1) due to Plaintiff's health conditions, she needed to take off a few days off at the end of October/beginning of November, but informed Defendant's management of same; (2) Plaintiff's termination came at a time when she was confiding in Defendant's management about her aforesaid serious health conditions and need for reasonable accommodations; (3) Plaintiff's termination came shortly after informing Defendant's management that she would need to take FMLA-qualifying block leave in the near future; and (4) Plaintiff was terminated after being subjected to hostility from Defendant's management and denied reasonable accommodations.

First Cause of Action Violations of the Americans with Disabilities Act, as Amended ("ADAAA") ([1] Actual/Perceived/Record of Disability Discrimination; [2] Retaliation; [3] Failure to Accommodate; [4] Hostile Work Environment)

- 27. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
- 28. Plaintiff suffered from qualifying health conditions under the ADA (as amended) which limited her ability (at times) to perform some daily life activities, as described *supra*.

- 29. Plaintiff requested reasonable accommodations from Defendant, including but not limited to not standing for prolonged periods of time, a stool to sit, and block/intermittent medical leave.
- 30. Defendant failed to accommodate Plaintiff by (1) refusing to provide with her a stool to sit; (2) making her stand for long periods of time; (3) by terminating Plaintiff before she had the opportunity to take a block medical leave; and (4) by terminating Plaintiff for taking 1-2 days off from work for her aforesaid health conditions.
- 31. Plaintiff believes and therefore avers that Defendant discriminated against Plaintiff by subjecting her to a hostile work environment and ultimately terminating her employment because of: (1) her known and/or perceived health problems; (2) her record of impairment; (3) her requested accommodations; (4) her complaints of disability discrimination/failure to accommodate; and/or (5) Defendant's failure to accommodate her disabilities.
 - 32. These actions as aforesaid constitute violations of the ADAAA.

Second Cause of Action <u>Violations of the Family and Medical Leave Act ("FMLA")</u> (Interference and Retaliation)

- 33. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
- 34. Plaintiff was an eligible employee under the definitional terms of the FMLA, 29 U.S.C. § 2611(a)(i)(ii).
- 35. Plaintiff requested leave from Defendant, her employer, with whom she had been employed for at least twelve months pursuant to the requirements of 29 U.S.C.A § 2611(2)(i).

- 36. Plaintiff had at least 1,250 hours of service with the Defendant during her last full year of employment.
- 37. Defendant is engaged in an industry affecting commerce and employs fifty (50) or more employees for each working day during each of the twenty (20) or more calendar work weeks in the current or proceeding calendar year, pursuant to 29 U.S.C.A § 2611(4)(A)(i).
- 38. Plaintiff was entitled to receive leave pursuant to 29 U.S.C.A § 2612 (a)(1) for a total of twelve (12) work weeks of leave on a block or intermittent basis.
- 39. Defendant committed interference and retaliation violations of the FMLA by: (1) terminating Plaintiff for requesting and/or for taking FMLA-qualifying leave; (2) by considering Plaintiff's FMLA leave and/or FMLA needs in making the decision to terminate her; and (3) terminating Plaintiff to prevent her from taking further FMLA-qualifying leave in the future.
 - 40. These actions as aforesaid constitute violations of the FMLA.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

- A. Defendant is to be prohibited from continuing to maintain its illegal policy, practice or custom of discriminating/retaliating against employees and are to be ordered to promulgate an effective policy against such unlawful acts and to adhere thereto;
- B. Defendant is to compensate Plaintiff, reimburse Plaintiff and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to past lost earnings, future lost earnings, salary, pay increases, bonuses, medical and other benefits, training, promotions, pension, and seniority. Plaintiff should be accorded those benefits illegally withheld from the date she first suffered retaliation/discrimination at the hands of Defendant until the date of verdict;

C. Plaintiff is to be awarded liquidated and/or punitive damages, as permitted by

applicable law(s) alleged asserted herein, in an amount believed by the Court or trier of fact to be

appropriate to punish Defendant for its willful, deliberate, malicious and outrageous conduct and

to deter Defendant or other employers from engaging in such misconduct in the future;

D. Plaintiff is to be accorded any and all other equitable and legal relief as the Court

deems just, proper and appropriate including for emotional distress;

E. Plaintiff is to be awarded the costs and expenses of this action and reasonable

legal fees as provided by applicable federal and state law;

F. Any verdict in favor of Plaintiff is to be molded by the Court to maximize the

financial recovery available to Plaintiff in light of the caps on certain damages set forth in

applicable federal law; and

G. Plaintiff's claims are to receive a trial by jury to the extent allowed by applicable

law. Plaintiff has also endorsed this demand on the caption of this Complaint in accordance with

Federal Rule of Civil Procedure 38(b).

Respectfully submitted,

KARPF, KARPF & CERUTTI, P.C.

By:

Ari R. Karpf, Esq. 3331 Street Road

Two Greenwood Square

Building 2, Ste. 128

Bensalem, PA 19020

(215) 639-0801

Dated: November 20, 2017

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Nicole Hill-Murray

CIVIL ACTION

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CVS Pharmacy	, Inc.	;	NO.	4				
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(a) Habeas Corpus - Cases brought under 28 U.S.C. § 2241 through § 2255.								
(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits.								
(c) Arbitration - Cases required to be designated for arbitration under Local Civil Rule 53.2.								
(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos.								
commonly referred to as	s complex and th	iat need spi	racks (a) through (d) that are ecial or intense management by iled explanation of special	()				
(f) Standard Management -	- Cases that do n	ot fall into	any one of the other tracks.	(X)				
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11/20/2017			Plaintiff					
Date	Attorney-	at-law	Attorney for					
(215) 639-0801	(215) 639-4	970	akarpf@karpf-law.com					
<u>Felephone</u>	FAX Nu	nber	E-Mail Address					

(Civ. 660) 10/02

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DRSIGNATION FORM to assignment to appropriate calendar.	be used by counsel to indicate the category of the case for the purpose of			
Address of Plaintiff, 4644 Penn Street, Apt 7, Philadelphia, PA 1912	4			
Address of Defendant: 1826 Chestnut Street, Philadelphia, PA 19103				
Place of Accident, Incident or Transaction; Defendant's place of business				
(Usa Reverse Side Fo.				
Does this civil action involve a nongovernmental corporate party with any parent corporation (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(
Does this case involve multidistrict lingation possibilities?	Yesu No 🕰			
RELATED CASE, IF ANY: Case Number: Judge	Date Terminated:			
Civil cases are deemed related when yes is answered to any of the following questions:				
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1. Is this case related to property included in an earlier numbered suit pending or within one	yes The violety terminated action in this court? Yes D NoD			
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior				
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3. Does this case involve the validity or infringement of a patent already in suit or any earlie	Yes O No O r numbered case pending or within one year previously			
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4. Is this case a second or successive habeas comus, social security appeal, or pro se civil rig				
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CIVIL: (Place / in ONE CATEGORY ONLY)				
A. Federal Question Cases:	B. Diversity Jurisdiction Cases;			
1. D Indemnity Contract, Marine Contract, and All Other Contracts	1. Insurance Contract and Other Contracts			
2. □ FELA	2. D Airplane Personal Injury			
3. Jones Act-Personal Injury	3. D Assault, Defamation			
4. 🗆 Antitrust	4. D Marine Personal Injury			
5. D Patent	5. Motor Vehicle Personal Injury			
6. D Labor-Management Relations	6. O Other Personal Injury (Please specify)			
7. N Civil Rights	7. D Products Liability			
8. U Habeas Corpus	8. Products Liability - Asbestos			
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10. I Social Security Review Cases	(Please specify)			
11. D All other Federal Question Cases (Please specify)				
ARBITRATION CER				
i, Ari R. Karpf (Check Appropriate 6)	ify:			
M Pursuant to Local Civil Rule 53.2, Section 3(e)(2), that to the best of my knowledge and	I belief, the damages recoverable in this civil action case exceed the sum of			
\$150,000.00 exclusive of interest and costs; Relief other than monetary dumages is sought.				
DATE: 11/20/2017	ARK2484			
Attornoy-at-Law NOTE: A trial do nove will be a trial by jury only if the	Attorney I.D.# 91538 sere has been compliance with P.R.C.P. 38.			
I certify that, to my knowledge, the within case is not period to any case now pending or except as noted above.	r within one year previously terminated action in this court			
DATE: 11/20/2017	ARK2484			
Attomey-at-Law	Attorney 1.D.# 91538			
CIV. 609 (5/2012)				

JS 44 (Rev. 06/17)

Print

Save As...

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the number of initiating the civil docket sheet. ASE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.

purpose of initiating the civil d	ocket sheet. (SEE INSTRUCT	TIONS ON NEXT PAGE O	F THIS FOI	RM.)				
I. (a) PLAINTIFFS				DEFENDANTS				
HILL-MURRAY, NICOLE (b) County of Residence of First Listed Plaintiff Philadelphia (EXCEPTINUS. PLAINTIFF CASES)				CVS PHARMACY, INC. County of Residence of First Listed Defendant Philadelphia (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.				
								(c) Attorneys (Firm Name, Karpf, Karpf & Cerutti, Suite 128, Bensalem, PA
II. BASIS OF JURISDI	CTION (Place an "X" in O	ne Box Only)			RINCIPAL PARTIES	(Place an "X" in One Box for Plaintif		
1 U.S. Government Plaintiff	X 3 Federal Question (U.S. Government Not a Party)				FF DEF 1 Incorporated or Prior of Business In			
2 U.S. Government Defendant	4 Diversity (Indicate Citizenshi)	p of Parties in Item III)	Citize	en of Another State	2 2 Incorporated and F of Business In	Principal Place 5 5 a Another State		
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CONTRACT 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise REAU PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle 975 Motor Vehicle 975 Motor Vehicle 976 Other Personal Injury 362 Personal Injury Medical Malpractice CIVIL RIGHTS 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities - Employment	PERSONAL INJUR 365 Personal Injury - Product Liability 367 Health Care/ Pharmaceutical Personal Injury - Product Liability 368 Asbestos Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPER 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability PERSONER PETITION Habeas Corpus: 463 Alien Detainee 3510 Motions to Vacate Sentence 5530 General 535 Death Penalty Other: 540 Mandamus & Othe 550 Civil Rights 555 Prison Condition 560 Civil Detainee - Conditions of Confinement	Y	DREETTURE/PENALTY 5 Drug Related Seizure of Property 21 USC 881 0 Other Other LABOR O Fair Labor Standards Act O Labor/Management Relations O Railway Labor Act Family and Medical Leave Act O Other Labor Litigation I Employee Retirement Income Security Act MMIGRATION Naturalization Application 5 Other Immigration Actions	. 422 Appeal 28 USC 158 . 423 Withdrawal	0 375 False Claims Act 376 Qui Tum (31 USC 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/ Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 9 895 Freedom of Information		
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VI. CAUSE OF ACTIO	Brief description of ca	itute under which you at abilities Act "ADA use: ADA, FMLA and t			utes unters diversity): 2 Medical Leave Act "F			
VII. REQUESTED IN COMPLAINT:	UNDER RULE 2	IS A CLASS ACTION 3, F.R.Cv.P.	N D	EMAND S	CHECK YES onl JURY DEMANI	y if demanded in complaint: D: XYes 'No		
VIII. RELATED CAS IF ANY	II. RELATED CASE(S) IF ANY (See instructions): JUDGE			DOCKET NUMBER				
DATE 11/20/2017		SIGNATURE OF AT	ORNEYO	FRECORD				
FOR OFFICE USE ONLY RECEIPT# A	MOUNT	APPLYING IFP		JUDGE	MAG. JU	JDGE		
								

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